

## **IC 29-3-5**

### **Chapter 5. Proceedings for Appointment of Guardian or to Procure a Protective Order**

#### **IC 29-3-5-1**

##### **Petitions for appointment of a guardian or to have a protective order issued; requirements; notice and hearing; conduct of hearing; participation by department of child services**

Sec. 1. (a) Any person may file a petition for the appointment of a person to serve as guardian for an incapacitated person or minor under this chapter or to have a protective order issued under IC 29-3-4. The petition must state the following:

- (1) The name, age, residence, and post office address of the alleged incapacitated person or minor for whom the guardian is sought to be appointed or the protective order issued.
- (2) The nature of the incapacity.
- (3) The approximate value and description of the property of the incapacitated person or minor, including any compensation, pension, insurance, or allowance to which the incapacitated person or minor may be entitled.
- (4) If a limited guardianship is sought, the particular limitations requested.
- (5) Whether a protective order has been issued or a guardian has been appointed or is acting for the incapacitated person or minor in any state.
- (6) The residence and post office address of the proposed guardian or person to carry out the protective order and the relationship to the alleged incapacitated person of:
  - (A) the proposed guardian; or
  - (B) the person proposed to carry out the protective order.
- (7) The names and addresses, as far as known or as can reasonably be ascertained, of the persons most closely related by blood or marriage to the person for whom the guardian is sought to be appointed or the protective order is issued.
- (8) The name and address of the person or institution having the care and custody of the person for whom the guardian is sought to be appointed or the protective order is issued.
- (9) The names and addresses of any other incapacitated persons or minors for whom the proposed guardian or person to carry out the protective order is acting if the proposed guardian or person is an individual.
- (10) The reasons the appointment of a guardian or issuance of a protective order is sought and the interest of the petitioner in the appointment or issuance.
- (11) The name and business address of the attorney who is to represent the guardian or person to carry out the protective order.
- (12) Whether a child in need of services petition or a program of informal adjustment has been filed regarding the minor for whom a guardianship is being sought, and, if so, whether the

case regarding the minor is open at the time the guardianship petition is filed.

(b) Notice of a petition under this section for the appointment of a guardian or the issuance of a protective order and the hearing on the petition shall be given under IC 29-3-6.

(c) After the filing of a petition, the court shall set a date for a hearing on the issues raised by the petition. Unless an alleged incapacitated person is already represented by counsel, the court may appoint an attorney to represent the incapacitated person.

(d) A person alleged to be an incapacitated person must be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that:

(1) it is impossible or impractical for the alleged incapacitated person to be present due to the alleged incapacitated person's disappearance, absence from the state, or similar circumstance;

(2) it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person as determined by the court;

(3) the incapacitated person has knowingly and voluntarily consented to the appointment of a guardian or the issuance of a protective order and at the time of such consent the incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from knowingly and voluntarily consenting; or

(4) the incapacitated person has knowingly and voluntarily waived notice of the hearing and at the time of such waiver the incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from making a knowing and voluntary waiver of notice.

(e) A person alleged to be an incapacitated person may present evidence and cross-examine witnesses at the hearing. The issues raised by the petition and any response to the petition shall be determined by a jury if a jury is requested no later than seventy-two (72) hours prior to the original date and time set for the hearing on the petition. However, in no event may a request for a jury trial be made after thirty (30) days have passed following the service of notice of a petition.

(f) Any person may apply for permission to participate in the proceeding, and the court may grant the request with or without hearing upon determining that the best interest of the alleged incapacitated person or minor will be served by permitting the applicant's participation. The court may attach appropriate conditions to the permission to participate.

(g) A court shall notify the department of child services of a hearing regarding the guardianship of a minor under this section if a:

(1) child in need of services petition has been filed regarding the minor; or

(2) program of informal adjustment involving the minor is pending.

The department of child services may participate in a hearing

regarding the guardianship of a minor described in this subsection.  
*As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.68; P.L.6-2010, SEC.10; P.L.162-2011, SEC.2.*

#### **IC 29-3-5-2**

##### **Appointment of guardian before adjudication of incapacity or minority**

Sec. 2. A guardian may not be appointed for an incapacitated person or a minor under this chapter until the incapacity or minority has been adjudicated.

*As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.6.*

#### **IC 29-3-5-3**

##### **Findings; appointment of guardian; limited guardianship; protective orders**

Sec. 3. (a) Except under subsection (c), if it is alleged and the court finds that:

- (1) the individual for whom the guardian is sought is an incapacitated person or a minor; and
- (2) the appointment of a guardian is necessary as a means of providing care and supervision of the physical person or property of the incapacitated person or minor;

the court shall appoint a guardian under this chapter.

(b) If it is alleged and the court finds that the welfare of an incapacitated person would be best served by limiting the scope of the guardianship, the court shall make the appointive or other orders under this chapter to:

- (1) encourage development of the incapacitated person's self-improvement, self-reliance, and independence; and
- (2) contribute to the incapacitated person's living as normal a life as that person's condition and circumstances permit without psychological or physical harm to the incapacitated person.

(c) If the court finds that it is not in the best interests of the incapacitated person or minor to appoint a guardian, the court may:

- (1) treat the petition as one for a protective order and proceed accordingly;
- (2) enter any other appropriate order; or
- (3) dismiss the proceedings.

*As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.69.*

#### **IC 29-3-5-4**

##### **Considerations for appointment of guardian**

Sec. 4. The court shall appoint as guardian a qualified person or persons most suitable and willing to serve, having due regard to the following:

- (1) Any request made by a person alleged to be an incapacitated person, including designations in a durable power of attorney under IC 30-5-3-4(a).

- (2) Any request contained in a will or other written instrument.
- (3) Any request made by a minor who is at least fourteen (14) years of age.
- (4) Any request made by the spouse of the alleged incapacitated person.
- (5) The relationship of the proposed guardian to the individual for whom guardianship is sought.
- (6) Any person acting for the incapacitated person under a durable power of attorney.
- (7) The best interest of the incapacitated person or minor and the property of the incapacitated person or minor.

*As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.7; P.L.149-1991, SEC.3.*

#### **IC 29-3-5-5**

##### **Consideration for appointment of guardian; order of consideration; priorities**

Sec. 5. (a) The following are entitled to consideration for appointment as a guardian under section 4 of this chapter in the order listed:

- (1) A person designated in a durable power of attorney.
- (2) The spouse of an incapacitated person.
- (3) An adult child of an incapacitated person.
- (4) A parent of an incapacitated person, or a person nominated by will of a deceased parent of an incapacitated person or by any writing signed by a parent of an incapacitated person and attested to by at least two (2) witnesses.
- (5) Any person related to an incapacitated person by blood or marriage with whom the incapacitated person has resided for more than six (6) months before the filing of the petition.
- (6) A person nominated by the incapacitated person who is caring for or paying for the care of the incapacitated person.

(b) With respect to persons having equal priority, the court shall select the person it considers best qualified to serve as guardian. The court, acting in the best interest of the incapacitated person or minor, may pass over a person having priority and appoint a person having a lower priority or no priority under this section.

*As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.70.*

#### **IC 29-3-5-6**

##### **Two or more minors or incapacitated persons; petition for appointment of guardian; separate accounting**

Sec. 6. When a petition is filed for the appointment of a guardian for two (2) or more minors or incapacitated persons who are children of a common parent, parent and child, or husband and wife, a separate petition need not be filed for each minor or incapacitated person, and appointment of a guardian for all may be considered in one (1) proceeding. A separate accounting is required for each minor or incapacitated person, but an actual segregation of assets is not

required except as required by the court.

*As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989,  
SEC.71.*